

1 Sparks, Nevada 89434 and a judgment declaring the foreclosure sale
2 void or, alternatively, an order that its security interest in the
3 property was not extinguished at the foreclosure sale because the sale
4 was commercially unreasonable.

5 **Standard**

6 To meet Article III standing requirements, the party invoking
7 federal jurisdiction bears the burden to show it has (1) suffered "an
8 invasion of a legally protected interest which is (a) concrete and
9 particularized and (b) actual or imminent, not conjectural or
10 hypothetical"; (2) that the injury is "fairly trace[able] to the
11 challenged action of the defendant"; and (3) that it is "likely, as
12 opposed to merely speculative, that the injury will be redressable by
13 a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
14 560-61 (1992) (internal quotation marks omitted). In considering a
15 motion to dismiss for want of standing, the court must accept as true
16 all material allegations in the complaint as well as all reasonable
17 inferences that may be drawn from such allegations. *W. Ctr. for*
18 *Journalism v. Cederquist*, 235 F.3d 1153, 1154 (9th Cir. 2000). The
19 allegations of the complaint also must be construed in the light most
20 favorable to the nonmoving party. *Shwarz v. United States*, 234 F.3d
21 428, 435 (9th Cir. 2000).

22 The court need not, however, accept as true those allegations
23 that (1) contradict matters properly subject to judicial notice; (2)
24 are conclusory allegations of law, mere legal conclusions, unwarranted
25 deductions of fact, or unreasonable inferences; (3) are contradicted
26 by documents referred to in the complaint; or (4) are internally
27 inconsistent. *Id.* at 435; *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th
28 Cir. 1998); *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th

1 Cir. 1994); *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), rev'd
2 on other grounds by *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119
3 (9th Cir. 2002); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th
4 Cir. 1981); *Response Oncology, Inc. v. MetraHealth Ins. Co.*, 978
5 F.Supp. 1052, 1058 (S.D. Fla. 1997).

6 On the other hand, the purpose of a motion to dismiss under
7 Federal Rule of Civil Procedure 12(b)(6) is to test the legal
8 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732
9 (9th Cir. 2001). The court can grant the motion only if it is certain
10 that the plaintiff will not be entitled to relief under any set of
11 facts that could be proven under the allegations of the complaint.
12 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 338 (9th Cir. 1996).

13 **Background**

14 Defendants Sandra White and Norene Vickers previously owned the
15 real property at issue, located at 296 Ave De La Bleu De Clair,
16 Sparks, Nevada 89434. The property was subject to a first deed of
17 trust which was recorded with the Storey County Recorder's Office on
18 June 22, 2007, and identified non-party First National Bank of Nevada
19 as the lender. The deed of trust encumbered the subject property to
20 ensure repayment of a \$193,762 loan to Sandra White and Norene
21 Vickers, who executed and delivered a promissory note to First
22 National Bank of Nevada evidencing the loan on June 21, 2007. The
23 loan was insured by the U.S. Federal Housing Administration ("FHA")
24 through the secretary of Housing and Urban Development ("HUD").
25 Sandra White and Norene Vickers also delivered to First National Bank
26 of Nevada a second deed of trust evidencing a \$21,500 loan to them,
27 that was ultimately assigned to defendant Bank of America, N.A.

28 Beneficial interest in the first deed of trust was assigned, in

1 chronological order to: Bank of America, N.A., Successor by Merger to
2 BAC Home Loan Servicing, LP FKA Countrywide Home Loans Servicing; HUD;
3 RBS Financial Products, Inc. ("RBS Financial"); and plaintiff.
4 Plaintiff currently holds the beneficial interest in the first deed
5 of trust.

6 On June 6, 2011, defendant Rainbow Bend caused to be recorded a
7 notice of delinquent assessment lien on the subject property. On
8 January 15, 2013, Rainbow Bend caused to be recorded a notice of
9 default and election to sell under the HOA lien. On May 22, 2013,
10 Rainbow Bend caused to be recorded a notice of HOA sale under the June
11 6, 2011 assessment lien. On June 25, 2013, Rainbow Bend conducted a
12 foreclosure sale of the subject property. Rainbow Bend was the
13 highest bidder at the sale, with a winning bid of \$900. Thereafter,
14 defendant James Fitchner purchased the subject property for an unknown
15 amount. James Fitchner is the current owner of the property pursuant
16 to the foreclosure deed. On January 22, 2015, plaintiff initiated the
17 instant action against defendants James Fitchner, Sandra White, Norene
18 Vickers, Bank of America, N.A., and Rainbow Bend, seeking to quiet
19 title. On August 3, 2015, Bank of America, N.A. filed a disclaimer
20 of interest and a stipulation to dismiss it from the case (#40), which
21 the court granted (#45).

22 In sum, plaintiff asserts that its interest in the security
23 interest in the property was not extinguished by the foreclosure sale.
24 Plaintiff alleges that a mortgage interest in real property, such as
25 the secretary of HUD's potential repurchase obligation in the
26 property, is federal property protected by the United States
27 Constitution. Plaintiff requests the court to declare the foreclosure
28 sale void, with no legal effect, for violating the Supremacy Clause

1 and the Contracts Clause of the United States Constitution.
2 Alternatively, plaintiff asks the court to find that its security
3 interest in the property as evidenced by the deed of trust survived
4 the foreclosure sale.

5 Rainbow Bend moves to dismiss plaintiff's complaint, or in the
6 alternative, moves for summary judgment. Rainbow Bend asserts that
7 plaintiff lacks standing for two reasons: 1) it lacks Article III
8 standing; and 2) it cannot establish good title in itself. Rainbow
9 Bend also argues that to the extent the quiet title claim is a
10 wrongful foreclosure claim, this court lacks jurisdiction because
11 plaintiff failed to exhaust the mandatory mediation process that NRS
12 38.310 requires before a lawsuit regarding a HOA's covenants,
13 conditions or restrictions may be filed. Defendants James Fitchner,
14 Sandra White and Norene Vickers are not parties to the motion (#27)
15 presently before the court.

16 **Analysis**

17 Under Nevada law, an action to quiet title "may be brought by any
18 person against another who claims an estate or interest in real
19 property, adverse to the person bringing the action." NEV. REV. STAT.
20 § 40.010. Quiet title actions are equitable proceedings in which a
21 party seeks to settle a dispute over ownership of property or to
22 remove a cloud upon his or her title to the property. *MacDonald v.*
23 *Krause*, 77 Nev. 312, 317-18, 362 P.2d 724, 727 (1961). "A plea to
24 quiet title does not require particular elements, but each party must
25 plead and prove his or her own claim to the property in question."
26 *Chapman v. Deutsche Bank Nat'l Trust Co.*, 129 Nev. Adv. Op. 34, 302
27 P.3d 1103, 1106 (2013) (citations and quotation marks omitted).
28 Therefore, a plaintiff's right to relief depends on superiority of

1 title. *Id.*

2 To have standing to assert a quiet title claim, a plaintiff must
3 have a current claim to the land in dispute. *See, e.g., Daly v.*
4 *Lahontan Mines Co.*, 151 P. 514, 516 (Nev. 1915) *aff'd on reh'g*, 158
5 P.285 (1916) ("An action to quiet title based upon the presumption
6 that the plaintiff has title"). Here, plaintiff claims a current
7 interest in the property which is adverse to Rainbow Bend. *See* #1 at
8 ¶¶ 28-29. Plaintiff asserts that it acquired title when it was
9 assigned the deed of trust from RBS Financial in May of 2014. #1 at
10 ¶ 18. On the other hand, Rainbow bend claims that it acquired title
11 to the property through the foreclosure sale, which extinguished the
12 deed of trust. As the beneficiary and assignee of the deed of trust,
13 plaintiff has standing to assert the rights held by any of its
14 successors in interest, such as RBS Financial, the beneficiary of the
15 deed of trust at the time of the foreclosure sale. #36 at 3-4; *see*
16 *Interim Capital LLC v. Herr Law Group, Ltd.*, 2011 WL 7047062 at *3 (D.
17 Nev. Oct. 21, 2011) ("The general rule of assignments is that the
18 transferee has the same rights as the transferor.").

19 In addition to prudential standing, Plaintiff also has Article
20 III standing to bring its quiet title claim. Rainbow Bend argues that
21 plaintiff lacks Article III standing because there can be no retro-
22 injury, the HOA did not cause the foreclosure, and the claimed injury
23 is not redressable because it would require unwinding the foreclosure.
24 #27 at 10-12. However, plaintiff is adversely affected because the
25 HOA foreclosure purports to eliminate plaintiff's deed of trust; this
26 constitutes injury in fact. The requested relief of resolution of the
27 title dispute and a determination of the owner of the subject property
28 would redress that injury. Thus, plaintiff has Article III standing

1 to dispute the validity of the foreclosure sale and can state a claim
2 for quiet title.

3 Additionally, plaintiff also alleges that the foreclosure sale
4 was not conducted in a commercially reasonable manner and is thus
5 voidable. On a motion to dismiss, the court must accept as true the
6 factual allegations in the complaint, including the allegations that
7 Rainbow Bend included in its record notices fees and costs which are
8 not part of the super priority lien. At this stage, the averments in
9 the complaint are sufficient to defeat the motion to dismiss on the
10 Article III standing issue.

11 Finally, Rainbow Bend asserts that, to the extent the quiet title
12 claim is a wrongful foreclosure claim, it should be dismissed as
13 failing substantively or dismissed because plaintiff bypassed the
14 mandatory mediation process outlined in NRS 38.310. Plaintiff
15 responds that this action is not subject to mandatory arbitration
16 because its claims do not relate to the interpretation, application,
17 or enforcement of any HOA covenants, conditions or restrictions.
18 Rather, plaintiff asserts that its claims concern the foreclosure
19 process.

20 NRS 38.310 prevents the commencement of any "civil action based
21 upon a claim relating to: (a) The interpretation, application or
22 enforcement of any covenants, conditions or restrictions applicable
23 to the residential property or any bylaws, rules or regulations
24 adopted by the association; or (b) The procedures used for increasing,
25 decreasing or imposing additional assessments upon residential
26 property, . . . unless the action has been submitted to mediation."
27 The statute defines "civil action" as "includ[ing] an action for money
28 damages or equitable relief," but does not include actions "relating

1 to the title to residential property." NEV. REV. STAT. 38.300(3).
2 Thus, as the Nevada Supreme Court explained in *McKnight Family L.L.P.*
3 *v. Adept Mgmt.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 559 (2013), a
4 claim to quiet title "directly relates to an individual's right to
5 possess and use his or her property . . . and accordingly, is exempt
6 from NRS 38.310."

7 Plaintiff alleges that the foreclosure was ineffective for a
8 number of reasons, including preemption, the sale was conducted in a
9 commercially unreasonable manner, and that the notice provided to
10 plaintiff violated due process. These claims relate to the title of
11 the property, and thus are not barred by NRS 38.310. Finally, the
12 plaintiff asserts that the complaint contains no claims that directly
13 implicate the interpretation of defendant's covenants, conditions or
14 restrictions but instead the application of NRS 116.3116. For
15 purposes of the motion to dismiss the court accepts the
16 representation. Should discovery prove otherwise, the defendant shall
17 not be precluded from raising the issue as to the mandatory
18 arbitration process as it relates to this claim in a motion for
19 summary judgment.

20 Accordingly, defendant's motion to dismiss, or in the
21 alternative, motion for summary judgment (#27) is construed only as
22 a motion to dismiss and is **DENIED WITHOUT PREJUDICE**, to be renewed in
23 a motion for summary judgment at the close of discovery.

24 IT IS SO ORDERED.

25 DATED: This 19th day of November, 2015.

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UNITED STATES DISTRICT JUDGE